

**REMARKS**

Claims 1 – 4, 6 – 15 and 17 are pending in the present application and are presented for further examination in view of the following remarks. Claims 5 and 16 have been canceled.

In the outstanding Office Action, the Examiner objected to the claim 6 for depending on canceled claim 5; rejected claims 1, 2, and 9 – 11 under 35 U.S.C. §112, second paragraph, as being indefinite; rejected claims 1 – 4, 6, 7, 9 – 11, 15 and 17 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,757,876 to Peacock (hereinafter referred to as “the Peacock ‘876 patent”); and rejected claims 8 and 12 – 14 under 35 U.S.C. §103(a) as being unpatentable over the Peacock ‘876 patent in view of U.S. patent no. 4,773,503 to Purkapile (hereinafter referred to as “the Purkapile ‘503 patent”).

By this Response and Amendment,

claims 1, 2 and 9 – 11 have each been amended to recite a ladder that is *adapted to be* secured to a truck or some part thereof;

claim 6 has been amended to depend from claim 1; and

the rejections under 35 U.S.C. §§102(b) and 103(a) have been traversed.

It is respectfully submitted that the above amendments do not introduce any new matter within the meaning of 35 U.S.C. §132(a).

**Objection to Claim 6**

The Examiner objected to claim 6 for depending on canceled claim 5.

**Response**

By this Response and Amendment, claim 6 has been amended to depend from claim 1 rather than from claim 5.

Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the objection to claim 6.

**Rejections Under 35 U.S.C. §112, Second Paragraph**

The Examiner rejected claims 1, 2, and 9 – 11 as being indefinite. The Examiner asserted that “[t]here is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. The Examiner requires the Applicant “to clarify what the claims are intended to be drawn to, i.e., either the ‘ladder’ alone or in combination with the ‘truck’.”

**Response**

By this Response and Amendment, claim 1 has been amended to recite: “...an upper end of the first leg portion *adapted to be* pivotally attachable to an upper portion of the tailgate and a lower end of the second leg portion *adapted to be* pivotally and releasably secured on a lower portion of the truck, whereby when the tailgate is in its closed position, the first leg portion and the second leg portion *are adapted to* continuously extend over the tailgate in a first operable position and opening the tailgate is associated with spontaneous and automatic deploying the ladder into a corresponding second operable position,” *present application*, claim 1, *emphasis added*; claim 2 has been amended to recite: “...where at said second operable position there is a rung accessible at a level lower than where the ladder is *adapted to be* fastened to the lower portion of the truck,” *present application*, claim 2, *emphasis added*; claim 9 has been amended to recite: “...there is a rung accessible at a level lower than where the ladder is *adapted to be* fastened to the lower portion of the truck,” *present application*, claim 9, *emphasis added*; claim 10 has been amended to recite: “...wherein the lower portion of the truck to which the second leg portion is *adapted to be* attachable is a bumper of the truck,” *present application*, claim 10, *emphasis added*; and claim 11 has been amended to recite: “...wherein the lower portion of the truck to which the second leg portion is *adapted to be* attachable is a lower rear portion of a chassis of the truck,” *present application*, claim 11, *emphasis added*.

As such, the language of claims 1, 2 and 9 – 11 now coincides with the language of the preamble of claim 1 as a “truck” is no longer positively recited in claim 1 or any of the claims dependent thereon. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections.

### **Rejections Under 35 U.S.C. §102(b)**

The Examiner rejected claims 1 – 4, 6, 7, 9 – 11, 15 and 17 as being anticipated by the Peacock '876 patent.

### **Response**

By this Response and Amendment, Applicant respectfully traverses the Examiner's rejections.

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, or either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131. The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Independent claim 1 recites “[a] ladder adapted to be secured to a truck fitted with a pivotal tailgate, the ladder comprising a first leg portion pivotally coupled to a second leg portion, at least one of said leg portions being fitted with at least one rung; an upper end of the first leg portion adapted to be pivotally attachable to an upper portion of the tailgate and a lower end of the second leg portion adapted to be pivotally and releasably secured on a lower portion of the truck, whereby when the tailgate is in its closed position, the first leg portion and the second leg portion are adapted to continuously extend over the tailgate in a first operable position and opening the tailgate is associated

continuously extend over the tailgate in a first operable position and opening the tailgate is associated with spontaneous and automatic deploying the ladder into a corresponding second operable position.”

*Present application*, claim 1.

The step assembly of Peacock is capable of being deployed only into a *single* operable position, in which the tailgate is open and the assembly fully extends from the upper end of the tailgate until it reaches the ground. To deploy the step assembly into this position one should always manually unfold it from the folded position in which it is stored on the inside face of the tailgate. The foldable tailgate step assembly disclosed in the Peacock ‘876 patent is not designed for and is not capable of being deployed in *two operable* positions.

Also, the Peacock ‘876 patent discloses a ladder that includes lower arms 17 having extension legs 14. The Peacock ‘876 patent discloses that an extension leg 14 includes a rubber plug 35 at the end of the extension legs 14. However, nowhere in the Peacock ‘876 patent is it disclosed that the rubber plug 35, the extension leg 14, or the lower arms 17 are manufactured such that they are “adapted to be pivotally and releasably secured on a lower portion of the truck” as recited in independent claim 1.

In the presently claimed invention, when the tailgate is closed, the ladder is in the first operable position, in which it extends continuously over the outside face of the tailgate and is accessible to a user. When the tailgate is being opened, the ladder spontaneously and automatically deploys into second operable position, in which its first leg portion is easily accessible. This result is achieved by virtue of the fact that, as recited in independent claim 1, “a lower end of the second leg portion [is] adapted to be pivotally and releasably secured on a lower portion of the truck.” If the lower end of the second leg portion were not adapted to be pivotally and releasably secured, the ladder would not *automatically* deploy into a second operable position. This feature is simply not disclosed in the Peacock ‘876 patent.

Thus, Applicant submits that the Peacock '876 patent fails to disclose all of the limitations of claim 1, and of the claims that depend from claim 1. Accordingly, Applicant submits that the Peacock '876 patent does not anticipate claims 1 – 7, 9 – 11 and 15 – 17.

Reconsideration of claim 1, as now presented, and of Claims 2 – 17, which depend thereon, is respectfully requested.

#### Rejections Under 35 U.S.C. §103(a)

The Examiner rejected claims 8 and 12 – 14 as being unpatentable over the Peacock '876 patent in view of the Purkapile '503 patent.

#### Response

By this Response and Amendment, Applicant respectfully traverses the Examiner's rejections.

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

The Purkapile '503 patent does not account for the deficiencies of the Peacock '876 patent. The Purkapile '503 patent is directed toward a hinge for connecting two sections of a ladder. The Purkapile '503 patent is not directed toward the *entire* ladder, rather the Purkapile '503 patent is directed toward a component of the ladder. The Purkapile '503 patent is silent as to whether an upper end of a ladder as adapted to be connected to an upper portion of a truck's tailgate and whether a lower end of a ladder is adapted to be pivotally and releasably secured on a lower portion of the truck, as recited in independent claim 1.

Therefore, Applicant submits that even if the references were combined in an attempt to achieve the present claims, the combination of references would not achieve the present inventive

subject matter. In particular, the combination of references would still lack the connection of an upper end of a ladder to an upper portion of a truck's tailgate and a lower end of a ladder being pivotally and releasably secured on a lower portion of the truck. Furthermore, the combination of references is silent as to a ladder that is operable when the tailgate is in both an open and a closed position. As such, Applicant submits that the connection of references does not render claim 1 obvious, and since claims 8 and 12 – 14 depend from claim 1 and contain all of the limitations found therein, the references do not render claims 8 and 12 – 14 obvious.

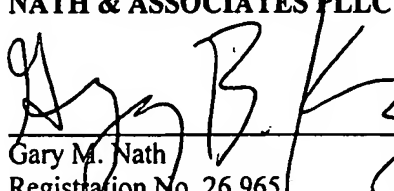
Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections made under 35 U.S.C. §103(a).

### CONCLUSION

In light of the foregoing, Applicant submits that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Date: January 6, 2005  
NATH & ASSOCIATES PLLC  
1030 Fifteenth Street, N.W.  
Sixth Floor  
Washington, DC 20005  
(202) 775-8383

Respectfully submitted,  
NATH & ASSOCIATES PLLC  
By:   
Gary M. Nath  
Registration No. 26,965  
Gregory B. Kang  
Registration No. 45,273  
Derek Richmond  
Registration No. 45,771  
Customer No. 20259